IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

WP(C).No. 20851 of 2006(G)

MP.2318/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
ST.1545/2005 of J.M.F.C. - III, KOCHI

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PETITIONER:

SANTHAMMA.T, W/O.SUKUMARAN NAIR, AGED 60 YRS, 10/225, THADAVILAYIL VADAKKETHIL, VALLIKUNNAM P.O., ALAPPUZHA DISTRICT-690 501.

BY ADV. SRI.V.SANTHARAM
SMT.SHIJA VARGHESE

RESPONDENTS:

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1. SOFIAMMA THOMAS, MIG, 426, PANAMPILLY NAGAR, COCHIN 36.

2. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY GOVERNMENT PLEADER SRI.K.A.AKBAR
ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2006, ALONG WITH WPC NO. 20863 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:TRUE COPY OF THE COMPLAINT S.T.1545/05 OF JUDICIAL IST CLASS MAGISTRATE COURT-III, KOCHI.

EXT.P2:TRUE COPY OF THE COMPLAINT NO.2318/05 DATED 6.5.05 FILED BY THE 1ST RESPONDENT BEFORE C.J.M, ERNAKULAM.

EXT.P3:TRUE COPY OF THE PROMISSORY NOTE DATED 21.4.05 EXECUTED BY THE SON OF THE PETITIONER.

EXT.P4:TRUE COPY OF THE CHEQUE DATED 11.2.05 IN S.T.1545/05.

EXT.P5:TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE 1ST RESPONDENT IN S.T.1545/05 DATED 5.7.04.

EXT.P6:TRUE COPY OF THE PROCEEDINGS DATED 12.7.06 IN THE COURT OF J.F.M.C-III, KOCHI.

/TRUE COPY/

R.BASANT, J.

W.P.C.NOs.20851 & 20863 OF 2006

Dated this the 30th day of November, 2006.

JUDGMENT

These petitions have been filed by the common petitioner/accused, who faces indictment in two separate prosecutions under Section 138 of the N.I Act.

2. The 1st accused is the son of the petitioner. The petitioner is not a signatory to the cheque. She is not a joint account holder. The drawer of the cheque is the 1st accused, an individual. Section 141 of the N.I Act has no application at all to the facts of the case. The short grievance of the petitioner is that she being not the drawer or account holder, prosecution under Section 138 of the N.I Act cannot and should not be initiated against her. She prays that the proceedings initiated against her may be quashed invoking the powers under Section 482 Cr.P.C and if not the constitutional powers under Article 226/227.

3. The allegations, even if accepted in toto, cannot make out any valid cause of action for the respondent/complainant to prosecute the petitioner. I am, in these circumstances, satisfied that the prayers in the Writ Petitions deserve to be allowed.

4. In the result:

i) These Writ Petitions are allowed;

ii) The prosecution in S.T.1545 of 2005 and S.T.1547 of 2005 before the learned Judicial First Class Magistrate-III, Kochi, in so far as they relate to the petitioner, is hereby quashed.

5. The learned counsel for the respondent prays and I find the said prayer to be absolutely justified that the learned Magistrate must be directed to dispose of the cases expeditiously. There shall be a direction that both those cases shall be disposed of by the learned Magistrate as expeditiously as possible - at any rate, within a period of 3 months from the date on which a copy of this common judgment is placed before the learned Magistrate.

R.BASANT
JUDGE

rtr/